



Section I. Comments During the Initial Comment Period

Toxic Assessment Group, August 28, 2000 Comments on Evergreen's Health Risk Assessment, Permit Renewal and Permit Modification; Request for Temporary Authorization

Comment 1 by Jody Sparks:

The risk assessment is still pending. Evergreen now seeks to modify its permit to add a 20,000 gallon tank for holding halogenated solvents. Those solvents would be D001 waste, a waste code not included in either Evergreen's current permit, or its modification application. The negative declaration and health risk assessment did not address either of these proposed changes. The magnitude of the proposed changes are such that the permit modification must be considered a "project" under CEQA, for which a new environmental assessment is required.

Response to Comment 1:

The approval of this permit modification does not include the 20,000-gallon tank requested by Evergreen to hold halogenated solvents. However, as part of the Stipulation for Settlement and Entry of Judgement (Settlement) dated November 9, 2000 between DTSC and Evergreen, a 8,500-gallon tank (Tank 501C) was authorized to store halogenated solvents (which are flammable) from the re-refining process prior to shipping the waste off-site. The 8,500-gallon tank was already proposed in the approved City of Newark Negative Declaration for blending flammable liquids, such as spent solvent, into RCRA fuel. The Tank is an existing tank that was used for storage of used oil and combustibles before conversion to hold flammables. The tank is equipped with a vapor recovery system that would collect vapors vented from the tank. Evergreen has secured a permit from City of Newark and Bay Area Air Quality Management District to use this tank for storage of the halogenated solvents from the re-refining process.

Comment 2 by Jody Sparks:

The human health risk assessment (HHRA) for the earlier expansion does not adequately address the impacts relating to the risk of upset, given that the 20,300 gallon tank proposed will hold a highly flammable hazardous substance that was not addressed in the initial study or negative declaration. The HHRA is therefore inadequate. Further, such substantial changes to a project require that a new CEQA analysis be undertaken even if a negative declaration has already been issued. For these reasons, the temporary authorization requested by Evergreen is impermissible.

Response to Comment 2:

The storage and shipment off-site for the halogenated solvent is not part of this permit modification. (See Response to Comment 1). The Settlement requires Evergreen Oil, Inc. to collect the process material in V-401; store it in Tank T-501C, and transport it off-site as a hazardous waste as set forth in Paragraph 10.3 of the Settlement.

The City of Newark's Negative Declaration for the proposed upgrade and expansion of Evergreen Oil, Inc. dated March 5, 1997 has addressed the risk of fire and explosion hazard (Page 58) from the 8,500-gallon tank for blending flammable liquids, such as spent solvent, into RCRA fuel. The 8,500-gallon tank described in the Negative Declaration has been used instead of the 20,000 gallon tank originally proposed by Evergreen as part of the Settlement.

Comment 3 by Jody Sparks:

Addition of the Solvent Tank Requested in the Permit Modification Application is a "Project" for Purposes of CEQA

CEQA requires all local agencies to prepare an environmental impact report ("EIR") on any project "which may have a significant effect on the environment." Pub. Res. Code § 21151. If there is a possibility that a project may have such an effect, the agency must conduct an initial threshold study. 14 C.C.R. § 15080. An agency should prepare an EIR whenever it can be fairly argued on the basis of substantial evidence that the project may have significant environmental impact. *No Oil, Inc. v. City of Los Angeles*, 13 Cal.3d 68, 75 (1974)

Response to Comment 3:

See responses to comments 1 and 2.

Comment 4 by Jody Sparks:

In its June 29, 2000 permit modification request letter, Evergreen proposes to add a 20,300 gallon tank to store the halogen rich light oil before it is shipped off site. See permit modification request letter dated June 29, 2000, item #6. This halogen rich light oil may contain up to 10,000 ppm of chlorine, which means that this material must be classified as a D001 hazardous waste for the characteristic of ignitability. Although Evergreen has failed to classify the halogen rich light oil as being a D001 hazardous waste, such an activity cannot be ignored. Construction of such a tank would be considered a project under CEQA because a fair argument exists that this tank could

have the potential for significant impact on the environment. Such a project at least warrants an initial study under CEQA.

Response to Comment 4:

See responses to comments 1 and 2.

Comment 5 by Jody Sparks:

Because Significant Changes Are Being Proposed, Another CEQA Analysis Is Required

Even though a negative declaration was adopted with respect to Evergreen's permit renewal, the 20,300 halogen tank was not included in the renewal application. When an EIR has been certified or a negative declaration adopted, no additional EIR is necessary unless (1) subsequent changes were proposed in the project which would create new significant environmental impacts not previously considered; (2) substantial changes occurred with respect to the circumstances under which the project was undertaken which would have resulted in previously discussed had become available and this "information was not known and could not have been known at the time... the Negative Declaration was adopted." 14 C.C.R.15162.

Here the 20,300 gallon halogen tank will hold highly flammable hazardous waste. This constitutes a significant change from the renewal application, which has serious environmental implications that were not (and could not have been) previously considered in the negative declaration. Such implications include possible tank explosion, tank leaks into water and soil, and possible air emissions from the tank. These significant new environmental impacts must be considered in order to comply with CEQA. DTSC has required EIRs at other facilities applying for permits to store D001 hazardous waste in the past, and the same level of oversight should be undertaken with respect to Evergreen.

It should also be noted that courts are more inclined to require an EIR when substantial changes in a project have occurred if no EIR, but only a negative declaration, was filed initially. See Long Beach Savings & Loan Assn. V. Long Beach Redevelopment Agency, 188 Cal.App.3d 249, 264 (1987) (the "fair argument" test would be controlling had respondents never prepared an EIR in the first instance).

Response to Comment 5:

Please see responses to comments 1 and 2.

Comment 6 by Jody Sparks:

The Health Risk Assessment Does Not Consider the Impacts of Changes Proposed in the Permit Renewal or the Permit Modification.

The purpose of a Health Risk Assessment is to evaluate potential health risks from exposure to emissions over time (chronic health risk) and also risk of harm from releases caused by upsets at the facility. However, the HRA for the Evergreen Newark facility proposed upgrade CEQA Initial Study is fundamentally flawed because it does not adequately cover risk of human health harm from upset events. Indeed, the HRA appears to focus almost exclusively on consequences of air emissions. While the HRA does discuss concentration of certain chemicals which may be emitted during a worst case upset scenario, it does not discuss in detail the individual upset events or sequence of events which would have to occur for these worst case scenarios to happen, nor does it address risk of upset scenarios while trucks are en-route to or from the facility.

Rather, Section 2.3.3 of the HRA (Emergency Release) simply refers back to the negative declaration, stating that “this [process upset hazards] is discussed in much more detail in the Initial Study prepared for this proposed project filed by the City of Newark (Woodward Clyde 1997a).” The only section in the Initial Study that addresses upset events is Section 10 (Risk of Upset) of the Environmental Impacts checklist. Two questions are asked: 1) Does the proposal involve a risk of explosion or the release of hazardous substances (including, but not limited to oil, pesticides, chemicals, or radiation) in the event of an accident or upset conditions? Answer marked is MAYBE; and 2) Does the proposal involve possible interference with an emergency response plan or an emergency evacuation plan? Answer checked is NO. This assessment is woefully inadequate for CEQA purposes because it includes no discussion of how the risk of explosion or release could occur or how it could be mitigated.

Response to Comment 6:

See responses to comments 1 and 2.

Comment 7 by Jody Sparks:

The HRA fails to address any impacts associated with the addition of the 20,300 gallon tank proposed in the permit modification that will be used to store halogens. That is because the initial study and subsequent negative declaration did not include consideration of such a tank. Rather, the negative declaration stated that after separating water and hydrocarbons from the oil, “the remaining hydrocarbon vapors are

condensed and used for fuel in the plant process heater.” See HRA p.6. While the activity described in the negative declaration is actually illegal because it violated the Boiler and Industrial Furnace rule (56 FR 7208, Feb. 21, 1991), an entirely new activity is now being proposed - one that requires an enormous amount of storage for highly flammable substances, which was not considered in the negative declaration and therefore could not have been addressed by the HRA.

As in the Pure-Etch case (Residents of Sanborn Court v. Dept. of Toxic Substances Control, Superior Court of California, County of Sacramento, Consolidated cases Nos. 95CS01074 and 95CS00910), the 20,300 gallon tank of flammable proposed in Evergreen’s permit modification request has the potential to result in a catastrophic release of hazardous waste or hazardous materials at the facility or en route to or from the facility. The Pure-Etch court found that a fair argument could be made that such a release could have a significant impact on the environment. Because the HRA does not even mention the tank, much less the risks of upset associated with it, the HRA is woefully deficient. Accordingly, as was required by the court in Pure-Etch, an EIR should be prepared by Evergreen to address the risk of a catastrophic release of hazardous waste or hazardous materials proposed to be stored in this new 20,300 gallon tank.

Response to Comment 7:

See responses to comments 1 and 2.

Comment 8 by Jody Sparks:

Temporary Authorization Under Section 66270.42 (e) of Title 22 is Improper Because Evergreen Has Not Complied with CEQA

Because Evergreen has not complied with CEQA, temporary authorization under section 66270.42(e) of Title 22 may not be granted. Temporary authorization may only be requested for Class 3 modifications meeting the first or second of the following criteria, or the third through fifth of the following criteria if the permittee provides improved management or treatment of a hazardous waste already listed in the facility permit:

1. To facilitate timely implementation of closure or corrective action activities;
2. To allow treatment or storage in tanks, containers, or in containment buildings in accordance with chapter 18 of this division;
3. To prevent disruption of ongoing waste management activities;

4. To enable the permittee to respond to sudden changes in the types or quantities of the wastes managed under the facility permit; or
5. To facilitate other changes to protect human health and the environment.

22 C.C.R. § 66270.42(e)(3)(C)(3)(1)-(5). Significantly, Evergreen's permit modification application makes only the most conclusory statement that these changes are necessary to comply with the Hazardous Waste Regulations." This statement satisfies none of the above criteria. Moreover, to the extent that Evergreen is requesting temporary authorization in accordance with criteria (3) through (5), it has offered no evidence that such authorization will meet even one, much less all three, of those criteria, or that Evergreen will be providing "improved management or treatment of a hazardous waste already listed in the facility permit." Indeed, the tank at issue will hold a waste specifically not already listed in Evergreen's permit.

Response to Comment 8:

To assess the potential environmental impacts associated with this decision pursuant to CEQA, DTSC reviewed and took into consideration the conclusions reached in the Final Negative Declaration for a Proposed Upgrade and Expansion of an Oil Recycling Operation (Evergreen Oil), approved by the City of Newark on March 3, 1997, and other supporting documentation. Based upon a review of all relevant CEQA documents and supporting information, and acting in its capacity as a Responsible Agency under CEQA, DTSC has determined that the activities proposed in the Temporary Authorization and Class 3 Modification were appropriate pursuant to 22 CCR sections 66270.42(e)(3)(C)(3), (4) and (5) and 66270.42(e)(3)(B) and would not result in a significant effect on the environment.

In accordance with the requirements of CEQA, the Notice of Determination was filed on Dec. 14, 2000 with the Office of Planning and Research in compliance with Section 21108 of the Public Resources Code. DTSC, as a Responsible Agency, approved the above Temporary Authorization on December 14, 2000 for a period of 180 days. The Temporary Authorization was extended on June 12, 2001 for another 180 days, until December 13, 2001.

Comment 9 by Jody Sparks:

Temporary authorization may only be granted if the Department finds that such authorization is exempt from the requirements of CEQA under Title 14, C.C.R. section 15061, or the applicable requirements of CEQA have been met with respect to the temporary authorization. Id § 66270.42(e)(3)(B). As explained in more detail above, the 20,300 gallon tank for holding D001 waste was not included in the initial study,

considered in the negative declaration, or analyzed as part of the HRA. Thus, the application requirements of CEQA have not been met. Moreover, because this project has never been considered for purposes of CEQA, it cannot have been determined to be exempt.

Response to Comment 9:

See response to comments 1, 2 and 8.

Comment 10 by Jody Sparks:

Evergreen Should Not Be Allowed to Continue Violating the Law by Burning Halogens in Violation of the BIF Rule

Finally, as noted above, prior to its request to modify its permit to allow it to store halogens, Evergreen was burning those halogens in violation of the law. It is not clear whether or not Evergreen is currently continuing to violate the law in this way. If they are, however, Evergreen should not be rewarded for such violation by being allowed to continue to violate the law in a way that clearly poses significant issues of risk to human health (i.e. creation of dioxin from burning halogens). Rather, that activity must be enjoined until another mechanism for disposing of those halogens is in place. If that mechanism is the 20,300 gallon tank proposed in Evergreen's permit modification, it must still comply with the requirements of CEQA.

Response to Comment 10:

See response to comments 1 and 2.

Comment 11 by Jody Sparks:

Evergreen is proposing a permit modification that will allow them to add a 20,300 gallon tank that will hold D001 waste. Such a tank has the potential to significantly impact the environment. As such, it must be considered a "project" under CEQA. At a minimum, it is a significant change that was not considered in the negative declaration issued with respect to Evergreen's permit renewal application. Either way, Evergreen must comply with the requirements of CEQA by conducting an initial study, and potentially an environmental impact report, that includes this 20,300 gallon D001 tank. In addition, the HRA conducted in conjunction with the negative declaration did not address this tank, and as such is deficient. For these reasons, the temporary authorization sought by Evergreen to operate the tank pending approval of its permit modification must be denied.

Response to Comment 11:

See responses to comments 1, 2 and 8.

Section II.

Response to comments made during the public hearing on November 15, 2001.

Comment 12 by Thomas Slater:

Does anyone think Evergreen is the only company putting out odors? What about the other 200 companies here? Has anyone thought about the salt ponds directly behind us, the dump back there, on days when you can smell it?

Response to Comment 12:

Comments noted. There are other businesses in the area where Evergreen is located and these businesses may also have contributed to the odor problems. However, it has been determined in the past by the City of Newark Fire Department and the Bay Area Air Quality Management District that Evergreen had been the source of the odor problems on several occasions.

Comment 13 by Duane Perkins

Is there a plant in place to dispose of 60,000 gallons of oil a day if Evergreen is no longer able to process it?

Response to Comment 13:

There are several used oil recycling facilities in California. There are also a number of facilities authorized to receive, store and transfer used oil.

Comment 14 by Ms. Crocker:

I first have a question about dates. The original permit you listed it as being June, 2000. Is it 2001 you're talking about, this process, or was it 2000? Was it last June?

Response to Comment 14:

On May 9, 2000, June 29, 2000 and October 9, 2001, DTSC received the Class 3 permit modification application and revisions to this application. The temporary authorization was originally approved by DTSC on December 14, 2000. The temporary authorization was extended on June 12, 2001 for another 180 days, until December 13, 2001.

Comment 15 by Ms. Crocker:

I just have a couple of comments to make. Number one, I do appreciate the fact that we need to have some way of recycling products that we use, and every community has its responsibility to take a piece of that. Keeping that in mind, people have to live in the community and so I see that there's two issues. One is odor and I understand that is in the area of the city government to take responsibility for, because you not concerned with odor, is that correct?

Response to Comment 15:

The used oil processed at the Evergreen plant contains small amounts of sulfur and mercaptan compounds. In the course of the re-refining process, the sulfur is converted into odorous gases such as hydrogen sulfide. Ammonia is also present in the process equipment. These gases can be odorous at extremely low concentrations. For example, hydrogen sulfide, which has a characteristic rotten egg odor, can be smelled at a concentration of 0.0005 parts per million (ppm). Methyl mercaptan, a common mercaptan in the refinery process which has a rotten cabbage odor, can also be smelled at the same low concentration as hydrogen sulfide. Ammonia is odorous at a concentration of 5.2 ppm. Hot asphalt also has a distinctive hot oil odor. While odorous compounds are largely contained within plant equipment, these compounds can be smelled at such low concentrations that small releases can result in off-site odors. The Bay Area Air Quality Management District (BAAQMD) has the responsibility for air quality control and the odor complaints. Attachment 2 is a copy of BAAQMD air quality complaint procedures. You may also contact the City of Newark Fire Department for odor complaints. For the Class 3 Permit Modification, DTSC has relied on the City of Newark Negative Declaration dated March 1997. In Section 2 of the environmental impacts, some of the issues about odors, air emissions and the air quality have been discussed. As a result of the court approved stipulation for settlement and entry of judgement dated November 9, 2000, Evergreen is no longer burning the halogenated light end solvents and is shipping them off-site. DTSC is concerned about the potential health complaints that have been raised

regarding the facility's operations. As a condition of the approval of this Class 3 permit modification, DTSC is requiring that Evergreen submit detailed specifications and engineering plans and install a new odor abatement and prevention system.

Evergreen has stated that it has taken a number of steps at the facility to reduce odors, including the following:

- Quarterly fugitive emissions program conducted by an independent contractor
- Purchased a gas detection instrument to check and maintain the equipment daily
- Installed larger activated carbon units on emission sources
- Replaced the vapor recovery blower with a more efficient one
- Stopped burning halogenated material
- Implemented neighborhood odor alert program, published a flier and dedicated a 24-hour hotline
- Modified the heater burner and introduced steam atomizing for better destruction of odorous compounds
- Connected waste and product storage tanks to the vapor recovery system
- Established an Odor Training Program and trained plant personnel on odor prevention including measures to be taken when shutting down or starting up the plant.

As a condition to approval of this class 3 permit modification, DTSC is requiring that Evergreen install the following systems:

- a) No later than June 30, 2002, replace the existing scrubber with a new and more efficient scrubber on the hot oil heater with a design capacity for the gas flow rate of 11500 acfm as specified in the Authority to Construct permit issued to Evergreen Oil, Inc. by the Bay Area Air Quality Management District (BAAQMD) on February 14, 2002.
- b) No later than June 30, 2002, connect the vapor recovery system to tanks T503A, T503B and T505, to reduce emissions when tanks are being filled.
- c) Within 120 days after approval from all agencies, install a thermal oxidizer to abate the odors that are generated from the existing asphalt loading rack. The new system will include the installation of approximately 650 feet of 6-inch diameter ducts, blower, scrubber and a thermal oxidizer. The thermal oxidizer shall also be used to abate the vapors from the vapor recovery system when the

heater is down. The vapor recovery system includes the following storage tanks sources: Tanks T502, T503A, T503B, T505, T507, T509, T510, T511A, T511B, T512A, T512B, T651A, T651B and T652. The activated carbon shall be used as a standby to reduce emissions from the above sources when both the heater and thermal oxidizer are out of service.

The Permittee shall submit permit applications for the thermal oxidizer to all appropriate agencies within 30 days from the effective date of this permit renewal.

d) No later than June 30, 2002, install interface level transmitter in Vessel 701, which handles overhead condensate containing halogens and mercaptans, to eliminate manual interface detection. The level transmitter will be installed in an existing vessel connection where the interface is detected by manually opening a valve.

e) Within 30 days from the effective date of this permit modification, trucks (except asphalt trucks) shall be loaded from the bottom to minimize odors from the trucks.

Evergreen will obtain the necessary permits from DTSC, BAAQMD and the City of Newark, as needed, for the new installations. Evergreen must send a notification to DTSC certifying that the work has been completed.

Comment 16 by Ms. Crocker:

The second thing is the fact that there are toxic things that are health issues, and that is your responsibility. So that is sort of a clarification for me, is that correct? Particularly with working with cancer causing items being the major emphasis of what you're working with, is that correct?

Response to Comment 16:

It is correct that DTSC has responsibility for ensuring that operations at hazardous waste facilities do not impact human health and the environment. A health risk assessment (HRA) is currently being prepared to estimate the cancer risk and health hazard index that the Evergreen facility contributes as a result of emissions from its facility's operations. DTSC will review the Health Risk Assessment as part of the permit renewal process. For the Class 3 Permit Modification, DTSC has relied on the City of Newark Negative Declaration dated March 1997. In section 2 of the Negative Declaration environmental impacts,

odors, emissions and air quality issues have been discussed. As part of the permit renewal process, DTSC will be evaluating additional measures that would be necessary to mitigate the odor problems and other potential impacts to human health and the environment. See also response to comment 15.

Comment 17 by Ms. Crocker:

The other thing is that you were talking about this process. Right now Evergreen is asking for a temporary variance that will be -- if it is given approval for it and we go through this consulting, at that point it will be temporary based upon modifications or contingencies that have to be met before the ten-year permit is given. Am I correct on that? That was my -- so basically if you give approval at this point, that it will still be temporary based on the fact they have to meet modifications that are given in terms of the health survey, that type of thing?

Response to Comment 17:

Evergreen has requested a Class 3 permit modification of its hazardous waste permit. If approved, Evergreen will be authorized to continue to operate under this permit until DTSC makes a permit decision on the permit renewal application. The permit renewal application has a number of deficiencies to be corrected. Also, a Health Risk assessment must be completed before DTSC will make any decision on the permit renewal application. The public will have an opportunity to provide comments on the permit renewal application before DTSC makes a permit decision on that application.

Comment 18 by Kim Perry:

I think that more testing should be required on a regular basis, such as every day for a month, to see what the health risks, including nights and weekends -- to see what the health risks are before the permit is even renewed. The plant is too close to residential areas to not be concerned about the health risks of the horrible odors being emitted."

Response to Comment 18:

Evergreen operators are required to check the facility for leaks and odors. Evergreen has also hired an independent contractor to inspect the facility valves, flanges, connectors and vessels to ensure that they do not leak. The contractor produces quarterly reports, a copy of which is submitted to the

Newark Fire Department and the Bay Area Air Quality Management District (BAAQMD).

Please refer to responses provided to comments 15 and 16 for further information. As part of the permit renewal process, DTSC will be evaluating additional measures that will be necessary to mitigate the odor problems and other potential impacts to human health and the environment.

Comment 19 by Joanne Harteall:

"I am concerned about the odors and if there are any health hazards associated with them. How much hazardous materials are transported on Cherry Street?"

Response to Comment 19:

We do not have an estimate for the amount of hazardous materials that are transported on Cherry Street. The local Fire or Health Department may have this information. The local Fire Department has information regarding the inventory of hazardous materials stored at the facility which is part of the facility's business plan. With respect to odors and health hazards, please review the responses provided to comments 15 and 16.

Comment 20 by Lori Lowe:

These are reasons why we should not approve the modification. Because they have not responded to the public request. One phone number to call to complain about Evergreen odor. This phone number would dispatch one, Bay Area quality control; two, Evergreen; three, Newark Fire Department."

Response to Comment 20:

Attachment 1 is the complaint procedures for Bay Area Air Quality Management District. Attachment 2 is copy of Evergreen's handout that lists several numbers to call pertaining to odor problems: Evergreen facility 510-795-4430, BAAQMD 1-800-334-odor (6367), City of Newark 911 and the fire Department 510-790-7254. We have discussed this issue with the City of the Newark Fire Department. They have recommended that the City of Newark Dispatch Center at (510) 790-7254 should be contacted for the odor problems and non-emergency situations. The dispatch center is currently instructed to call a fire engine vehicle to go to the facility and investigate the odor complaints. The

BAAQMD has a different procedure. They need to get a number of calls before they will send an inspector to the site.

Comment 21 by Lori Lowe:

To educate and inform the community of what to do when you smell the odor and where the odor is coming from. This Draft needs to be community approved.

Response to Comment 21:

Please refer to the previous response and also to the response to comments 15 and 16. Evergreen has stated that they will engage the services of a public relations firm/person. Evergreen has stated they will hold quarterly community meetings, starting March 2002.

Comment 22 by Lori Lowe:

To stop the odor if I feel Evergreen's requirements appropriate for getting an approval for Permit Modification growth. Number one, accurate monitoring, tracking of odor release days and phone complaints. Community vote for approval of growth. Community approved additional air testing for toxins, such as dioxins. We are not comfortable with Evergreen's control testing on a good air day. Volunteers from the community would keep tanks on site at their homes. On a bad air odor day samples of air would be taken and tested at an approved community facility. After all, it is our health we are considering.

Response to Comment 22:

Please contact the Bay Area Air Quality Management District to inquire about test locations and further testing of the air quality. Please see responses to comment 15 and 16 for further information.

Comment 23 by George Mognaga:

I believe George left and he had requested a copy of the sign-in sheet.

Response to Comment 23:

A copy of the sign up sheet has been provided to Mr. Mognaga.

Comment 24 by Jon Ladeau:

I'm a 23-year resident and I've got two concerns. One is my long-term exposure to nuisance odors. I'd like to be abated a little better than it is. I'm concerned over the long-term exposure to dioxins. And I have two requests. I would request that the permit process involve an approved dioxin testing as well as a propagation analysis for public publication, so that the public could be informed as to prevailing winds, where might expect the toxins and/or pollutants to come.

Response to Comment 24:

The HRA report will be required by DTSC as part of the permit renewal application process and the public will have an opportunity to comment on the draft permit decision for the permit renewal including the HRA. See also responses to comments 15 and 16.

Comment 25 by Jon Ladeau:

The other request is that the permit require the proposed new odor abatement equipment to be installed and that a permit revocation clause be included for noncompliance to this. Thank you.

Response to Comment 25:

Please review response provided to comment 15. As a condition of this class 3 permit modification approval, DTSC is requiring Evergreen to install new odor abatement equipments. In addition, failure to meet permit requirements is a violation of hazardous waste requirements. DTSC also has the authority to revoke a permit under certain conditions.

Comment 26 by Syed Zaidi:

We are very concerned about the chemicals and other toxic waste emitted from the Evergreen plant. Every day, almost, we have to smell the rotten eggs and we don't know what we are smelling and inhaling. These kinds of plants should never be allowed to be built near residential houses. I would urge to cancel the permit and close the plant.

Response to Comment 26:

Please see response to comments 15 and 16.

Comment 27 by Gus Costas:

We have lived in 6290 Rock Rose Drive for the past 14 years. During that time we have been disturbed by strong sulfuric smells that usually last for a considerable amount of time, up to several hours. During the last 14 years we have called many meetings like this and really have progressed very little with our complaints in regards to toxic waste airborne substances and nuisances as far as smells. We've called the EPA many times. Usually they arrive two to five hours later when the smells are gone. We have been forced to keep our windows closed and have been forced to stay indoors to avoid getting headaches. The record shows Evergreen has not been a good neighbor and to many of us here we feel like our complaints are falling on deaf ears and it's time for change.

Response to Comment 27:

Please see responses to comments 15 and 16.

Comment 28 Jody Sparks:

I'm with the Toxic Assessment Group. Address, Post Office Box 186, Stewart's Point, California

Last summer I attended the Evergreen meeting. Communities for a Better Environment were also present, if you recall that. And we submitted comments dated August the 28th to Evergreen and the Department because we were asked to put our concerns in writing.

Response to Comment 28:

The response to your comments dated August 28, 2000 is provided in Section I of the response to comments.

Comment 29 Jody Sparks:

So, my comments. First of all, having been someone that submitted comments, though, true, it wasn't in a formal process, I was a bit irritated that the Toxic Assessment Group who helped develop the mandatory mailing list did not receive notice of this meeting. I hope that's corrected now.

Response to Comment 29:

Unfortunately a Site Mitigation Program mandatory mailing list was used and the

Toxic Assessment Group was not listed. This has been corrected.

Comment 30 Jody Sparks:

Secondly, I'd like to discuss something else from a process perspective. I work on a lot of sites and work with a lot of environmental groups when I work with businesses, so some of this is processed things that I know is supposed to be there for you, and isn't there for you right now. And so one of them is the library repository. In the Fact Sheet that went out to the community there is a discussion there and it was discussed today about a settlement agreement dated December the 14th. I believe it is inappropriate for the Department to have a hearing for the community to come and comment on something when a key document that actually sets out what you're going to approve has not been made available to the public and I know that Allan Plaza said he would put it in the library. But I shared my copy with a person here and I believe that anyone here who wants a copy of a settlement agreement, put it in a library, but I believe they should also be able to ask you for it and you should mail it to them, because you didn't put the proper documents in the repository.

Response to Comment 30:

The Stipulation for Settlement and Entry of Judgement dated November 9, 2000 was in the Newark library on the date of the hearing. In addition, this document was also available at the DTSC Glendale Office since November 2000. DTSC staff visited the library and confirmed that the settlement document was present at the Newark Library on the date of the public hearing. The Newark Fire Department was also provided a copy of the above settlement shortly after the judgement was entered. Ms. Sparks was also provided with a copy of the settlement the day before the hearing as requested. DTSC would have mailed a copy of the settlement document to anyone who requested it. The Fact Sheet that was sent to the public announcing the comment period for the Class 3 permit modification referred to the settlement that was reached between DTSC and Evergreen for various alleged violations. DTSC did not receive a request for a copy of this settlement document from other community members.

Comment 31 Jody Sparks:

Secondly, a library repository on a hazardous waste facility is a living thing. It doesn't end when whatever happens to the permit. The community is supposed to be able to go to the library and see the permit, see the contingency plans, see the Public Participation Plan, see their enforcement record. It's all supposed to

be there and you're supposed to be able to go in there, so when you have some of these questions, though they're big reports, it's supposed to be there so that you can see it. And I thought maybe this was just the other sites I had worked on, but I did call the Department headquarters today and confirm that is supposed to be the case. The other problem with this project is one that has to do with the way the Department of Toxics has set it up. If you notice the Project Managers and the staff people that are reviewing the information are in Los Angeles. So if you want to see documents, the only place you can go is to fly to Los Angeles to go see them. So I think it is very important that the Department make a concerted effort to make key documents – I know not every piece of correspondence, but the key documents on this facility and all facilities in the area that you have jurisdiction over, that those documents are made available so people don't have to go to Los Angeles in order to review it.

Response to Comment 31:

DTSC has contacted the Newark Fire Department to find out if they would agree to become a repository of key Evergreen related documents since the Newark library has limited space and would only allow DTSC to reposit documents on a temporary basis. The Newark Fire Department has agreed to be a repository of key Evergreen documents and DTSC will ensure that in the future these documents will be available at the Newark Fire Department. The Newark Fire Department will have these files available to the public for review on an appointment basis. During public comment periods, DTSC will continue to use the Newark library as well as the DTSC Glendale Office as repositories.

Comment 32 Jody Sparks:

I have a question about the documents in the library repository. The covers say "Permit Modification dated October, 2001," is that different than the one that we commented on before, I mean is there a new version?

Response to Comment 32:

The Permit Modification dated October, 2001 contains revisions which were not contained in the June 2000 application. Permit modification applications undergo technical review by DTSC. Notices of deficiency are submitted to the facility requesting revision to the application. The October 2001 application is the latest revision to the application. It contains revisions that DTSC requested.

Comment 33 Jody Sparks:

And then another comment I have is there are a number of other sites in the state of California where communities have had odor problems and I believe it would benefit both the City of Newark and the Department of Toxics to look and see what types of things were implemented to assist the community in dealing with nuisance odors, because there's no point in reinventing the wheel if there are things out there that might be of assistance.

Response to Comment 33:

Comments noted. DTSC is requiring Evergreen to install additional odor abatement equipment as a condition of this Class 3 permit modification approval. See responses to comments 15 and 16.

Comment 34 Jody Sparks:

Okay. Those are just procedural comments. Now I have some substantive comments regarding the Permit Modifications. The Fact Sheet, not in the notice, says that the settlement agreement requires Evergreen to stop burning hazardous waste at the Newark Facility. Have they done that already, that's not clear. If so, what do they do with the hazardous waste? Does it go off-site, is it stored before it goes off-site? They have previously requested authorization for a 20,000-gallon tank to store the halogens. The halogens are extremely flammable. Okay, so they wanted to store this in this tank. Now our comments on them doing this is that we submitted last August, and I'll read from them. "The halogen tank will hold highly flammable hazardous waste. This constitutes a significant change from the renewal application, which has serious environmental implications that were not and could not have been previously considered in the City's negative declaration. Such implications include possible tank explosion, tank leaks into water and soil and possible air emissions from the tank. These are significant new environmental concerns. So I'm still very confused if what you're doing is they're not burning and if they're not burning they're piping to this tank and it's like a thousand gallons a day or whatever and it's being held in this tank until this permit modification is approved and then it's shipped off-site. It's a very confusing process, I still don't understand what you're doing, so it needs to be clarified.

Response to Comment 34:

As required in the settlement agreement, Evergreen has stopped burning halogenated solvents at the Newark Facility since June 2001. This material is being stored in a 8,500-gallon tank prior to shipment off-site. The settlement

agreement required that Evergreen cease burning the halogenated solvents and send it off-site in order to bring Evergreen's operations into compliance with hazardous waste laws and regulations.

The Class 3 permit modification approval issued by DTSC does not include the authorization to store and ship off-site the halogenated solvents. This permit modification only includes 4 of the 6 items that Evergreen originally requested in its Class 3 permit modification application.

Comment 35 Jody Sparks:

Also on oily water, the May 9th Class 3 Permit Modification and Temporary Authorization Request -- or maybe it's June, I'm sorry -- addressed to Allan Plaza, lists a requested change to the permit, "waive the restriction on water content, 30 percent of the oil water mixture and emulsions and allow Evergreen to accept oily water." A follow-up letter to Allan Plaza on June 29, 2000, apparently a new version of the Permit Modification Request, with some DTSC comments addressed still states, one of the requested changes, remove the restriction on water content of used oil. The revised operation plan for Evergreen that they submitted with their Request for Class 3 Permit Modification does not discuss at all how Evergreen is changing their process to increase throughput capacity. The application letter didn't either. It just says, that this change and others can be made using existing equipment.

Response to Comment 35:

The removal of the water content restriction on used oil that Evergreen will be accepting will not require changes in its current methods of processing the used oil. Also, the increase in capacity is achieved using existing equipment without modifications. Evergreen was operating at this increased capacity (30 gallons per minute) when DTSC issued a variance to Evergreen in 1991 and a temporary authorization in December 2000.

Comment 36 Jody Sparks:

As far as the water content restriction on used oil being waived, the operation plan has a page insert into and you can tell it's an insert because the type face is different, that discusses dewatering procedures. This must be for the oily water that they want to accept, I guess. Therefore, the notice says that the Modification will allow them to receive used oil without regard to water content of the used oil. So I have two questions. Does receive mean they get to take it in

and transfer it out but not treat it? If they can treat it, how do they do that? What happens to it? If they can't, does it not count against their 15 million, or whatever it is, gallon a year limit? This would mean that they would be radically increasing the amount of waste that flows through the facility.

Response to Comment 36:

Evergreen's authorization to accept used oil without regard to the water content of the used oil will not change the way used oil is managed at the Evergreen facility. The oil must meet the definition of used oil as specified in section 25250.1 of the Health and Safety Code. Used oil is not defined in statute or regulation by water content. The Class 3 permit modification does not authorize Evergreen to accept a different waste stream or waste code.

Comment 37 Jody Sparks:

Two, is what this really means is that they are increasing the waste codes that they can take to include oily water as a waste code? Or is the Department going to call it all used oil, regardless of water content? Is this unique to Evergreen? Why does the DTSC not use the appropriate waste code in the public notice? If they are going to be taking oily water are they mixing it with used oil in violation of 25250.7 or has this already been addressed?

Response to Comment 37:

Evergreen is not proposing to accept oily water or a different waste code. The used oil that Evergreen will be accepting under the approved Class 3 permit modification will carry the same waste code as the used oil that Evergreen has been authorized to receive since 1986. See response to comment 36.

Evergreen is the only used oil recycling facility that has had a restriction on the water content of the used oil they can accept.

Comment 38 by Lori Lowe:

I've lived on Marguerite Drive for the past ten years. And I'm going to go out on a limb here because I've been very involved with following Evergreen and what they've been doing. Something I've never talked about before is a few years back Evergreen had a really bad day. And I'm a very honest person, I went out on my lawn, took a huge whiff, because I always confirm it first. I was sorry I did that. I had Evergreen on my front lawn, it was confirmed, it was an Evergreen

smell. The next day that night, in the middle of the night I woke up with an excruciating migraine headache. I'd never had one before in my life. I was rushed to the emergency room. I was put on I.V.s for about four or five hours. At the time the doctor asked me was I around chemicals. I said, no, it was the day after an Evergreen oil smell day. I didn't associate the two. And to this day I don't know for sure if that's what it was, but when we did meet at Bunker School, Communities for a Better Environment told me some of the side effects and that was one of them. I am concerned as a community person because we have children. Recently we dropped our children off at Bunker School and as soon as they got out of the car door my child said to her father, "What is that smell, dad, it's awful." It was a bad day. All the children are on the school grounds. Up to this past spring we've had no drills at all, ever, at Bunker School, which is on Smith Street, the same street as Bunker School. On every set, they are know they're omitting odors. It happens every Saturday morning. At ten, eleven o'clock you go for a walk around the block, you get halfway and the odors start coming. You run home as fast as you can and you close your windows and you bring your kids in. I have a big concern for the kids on the school grounds. How do we get them in off the school grounds. It still really has not been addressed. The little haphazard drill we had last spring, the Newark Fire Department tried to put it together with Evergreen, but they didn't give the school enough notice. They had special testing that week, they couldn't complete the drill. This is not acceptable in my opinion and I just urge everybody to really think about your health conditions and our property values.

Response to Comment 38:

See responses to comments 15 and 16.

Comment 39 by Trubie Bailey:

I live on Manzanita Street. I have a couple of issues and one that my neighbor gave me also. First of all, I would like to see a community public health evaluation with respect to asthma completed before the EPA approves the Evergreen variance. As a part of your response to the people who are here and other people who have written to you, I would like you to clarify, in writing, of course, the difference between a human health risk assessment, what it looks like, what it's not and contrast that with the community public health evaluation. I think what we in our neighborhood are looking for is someone who comes around and finds out who has health problems and gets that process started in a real way. feel emotional about that one.

Response to Comment 39:

For a community public health evaluation with respect to asthma, you must ask your local health department to conduct such a study. The Human Health Risk Assessment evaluates the potential increased cancer risk and health hazards associated with the facility operations. The chemicals released from the facility into the water, soil and air are considered in this evaluation. In general, a risk estimation greater than one in a million or a hazard index greater than 1 indicate a presence of contamination which pose a significant threat to human health. See also the responses to comments 15 and 16.

Comment 40 by Trubie Bailey:

There was a settlement between the State of California and Evergreen as a part of -- oh, I guess, helping Evergreen get into compliance. I would like to see that record, that settlement, a copy of that settlement be a part of the Newark Fire Department's HAZMAT file. I don't know if it is a part. If it's not, I believe it should be. In addition I would also like to see a copy of that settlement on file at the Newark Public Library. I would have liked to have read it prior to coming to these hearings.

Response to Comment 40:

See the responses to comments 30 and 31.

Comment 41 by Trubie Bailey:

One of my neighbors has asked me to read her questions, Linda Aguilar, A-g-u-l-a-r. Has Evergreen asked any people that live in the area about their health problems, because there are many? What does human health risk assessments mean? Are you concerned about our health? Would anyone that works for Evergreen live in our area? How can someone use poisons like they want to use and are using when there is such a health risk to the people and when it reacts to water, what are you thinking of? We are at sea level, just one mistake and we're all in danger of some health risks.

Response to Comment 41:

Response: see responses to comments 15, 16, and 39.

Comment 42 by Bill Wahbeh:

I have a few comments about our application for a Class 3 Modification. This Permit Modification does not require changes in the facility's operating conditions, except as noted in the Temporary Authorization. Evergreen has been operating the re-refining section for the past ten years without accident or significant environmental impact. Approving the Class 3 Permit Modification would not have a negative impact on the environment or increase in the health risk of the community.

The Class 3 Modification does not require the installation of new equipment, it just maintains the status quo that we've been doing for the last ten years. Denying the Class 3 Permit Modification will result in a greater environmental damage and negative health impact on the community. This facility is the only facility that recycles used oil in this area. If we don't take the oil it will end up in the water, in the garbage and in somebody's backyard. And we feel this facility is very valuable to the community, to the Bay Area, to the whole state.

The facility is being and has been inspected on a regular basis by the fire department, by DTSC, by the air district and they come there all the time, and they are as much concerned with the environment as we are and as you are, because all of us, we have a legal obligation and responsibility towards the governing laws of the city, of the state and even the federal EPA.

We said last night we will continue to improve the odor situation. I want to add some other things, like getting new permits. We will upgrade that. People talk about burning material. There is a court order settlement, we stopped burning the halogenated material that is a possible source of dioxins. We stopped in June and we have installed a system in our plant and the system was approved by the Newark Fire Department, by DTSC, by the Bay Area Air Quality Management District. We obtained building permits to put the piping in. We obtained a permit to store flammable in the tank. The tank that we are using now in the facility, which is Tank 501© is included in the City's Negative Declaration, which was filed with the state's clearing house. So the material that we're shipping out, everything was done by regulations and was reviewed by the regulating agencies. One other thing, people talk about dioxins. So the material that people are concerned about that we are burning, we are not burning.

Dioxins, I want to tell you something scientifically, dioxins are particulate matter, meaning they are solids. That's what those dioxins are. They are not gases, they are not fumes. They are particulate matter that comes from the stacks, but we are not burning that material and we repeated this over and over and we will continue to do that. And in the future when we get our new permit one of the requirements is that we will have a source test. People talk about settlement. There is a copy of the settlement in the Newark Library. If you go to the Newark Library to the desk there, there is a copy of the settlement, total complete copy.

You'll see what the violations are and what are the conclusions of that settlement. Evergreen will continue to be, believe it or not, good citizens and our company's doors are open for anyone to come and talk to us. We're not the enemy, we are your neighbors and we will continue to work in this community to protect the environment. Thank you.

Response to Comment 42:

Comment noted.

Comment 43 by Mr. Costas:

MR. COSTAS: Mr. Wahbeh, in response to what you're saying, I want to go on record, that in the last 14 years you have not been a good neighbor. I don't know how long you've been with the company, but, based on results, the results -- we're all here based on the results. If you were good neighbors, we wouldn't have a problem. Okay. So, we're here concerned about our health. I don't know where you live, but we live in the nearby area within 2000 feet of the facility and we smell it on a regular basis, it's a nuisance. Okay? Thank you.

Response to Comment 43:

See response to comments 15 and 16.

Comment 44 by Mr. Bob Kern:

MR. KERN: Bob Kern, K-e-r-n. I'd like to address quality of life for the people who live around the plant. I moved here to Newark in 1978. There weren't odors present at the time. I wouldn't have moved near an airport, because of noise. I probably wouldn't have moved to Newark had I known about the smell, the nuisance. It's pervading, it's been ongoing, it hasn't been corrected. The whole community has had frustration in dealing with any one of five or six numbers to call that you don't get any response to. It's kind of a joke to call Evergreen. I'd like to go on record that I don't remember being given a choice prior to this to have any comment or input. There's a large community out there, probably from Newark High School to Cedar to Central that are impacted by this odor constantly. I just wanted to have that taken into account.

Response to Comment 44:

Please see responses to comments 15 and 16.

Comment 45 by Mr. Syed Zaidi:

My name is Syed Zaidi and I live on Narcissus Avenue in Newark. And this smell sometimes is so bad that, you know, I jog along J and I can't even jog really. I just go in the park and jog there. And as the gentleman said at Evergreen, doors are always open. Yes, they are, but once it was so bad I drove in the plant, the doors are open, not a soul in there, not even one person. I walked all over the place. There was not even one person I could find. And the doors are open, sure. It's so bad we just -- I really don't know what to do. If I had a choice I would have never moved in here. Thank you.

Response to Comment 45:

Please see response to comments 15 and 16.

Comment 46 by Mr. Bob Reed:

My name is Bob Reed and I live on Marguerite Drive and I was at the first meeting when the place was being formed, I even watched them build it. And I commute up 101 for years, smelling it in the San Carlos area twice a day. So I asked the question about the smell and they informed me at that time there would be no smell. Tonight I hear they say, yeah, they do have a smell problem and they're working on it. Well, that was 15 years ago. How long is it going to be?

Response to Comment 46:

Please see responses to comments 15 and 16.

Section III.

**Written Comments Received During the 45-day Public Comment Period,
October 16, 2001 - November 30, 2001**

Comment 47 by Lora Gisler dated November 27, 2001

I would like to express my concern and disapproval for the proposed Class 3 Permit Modification for Evergreen Oil Inc. located on Smith Avenue in Newark, California. I attended the public hearing meeting on Thursday, November 15th, 2001 at the Silliman Activity Center but felt it was necessary to express my concern in writing. I live a few blocks away with my husband, two young children (2 and 4 year old), and two dogs.

One outstanding issue I heard the Evergreen Oil representative state was that Evergreen presently complies with all codes and regulations. Those codes and regulations are what exist today, and they only came into effect because there was a problem. What future NEW codes and regulations will be enacted because history proved they were needed? I do not want to look back in ten years and see that my family and I were the guinea pigs.

Response to comment 47:

DTSC must base its decision with regard to this permit modification application on existing rules, regulations and health and safety information. The facility will be required to comply with any laws and regulations which are enacted in the future.

Comment 48 by Lora Gisler:

No one has been able to tell us what the long term exposure of being near this plant is doing to us. I hear of numerous neighbors saying their children have asthma or learning disabilities. Please require that a study be done in our neighboring streets to see if there is a higher concentration of asthma, cancer, or any other type of health issues compared to another "typical" groups. And please explain in writing what the possible side effects of the air emissions, water and soil contamination might be on us (especially when Evergreen Oil was burning their hazardous material waste up, until June 2001).

Response to comment 48:

Please also see the response to comment 39. A Health Risk assessment was required as part of the City of Newark Negative Declaration approval. Evergreen will submit a completed HRA report as part of their permit renewal package. You should contact your local Health Department with regards to any investigations into higher incidences of asthma or learning disabilities in the community in proximity to the facility.

Comment 49 by Lora Gisler:

With the increase in the amount of waste handled, there is always the increase in truck and railroad activity. The risk of accidents and spillage from these trucks and rail cars also increases.

Response to comment 49:

It is true that an increase in waste handled by the facility includes an increase in truck and rail traffic. The facility has operated at these levels under the prior variance and temporary authorization. The City of Newark Negative Declaration looked at the impact of increase in traffic as the result of the facility operations and determined they would not have a significant effect.

Comment 50 by Lora Gisler:

Periodically I will smell the odor coming from Evergreen which of course concerns and irritates me, but what about the times my nose does not pick up the smell. How much are we breathing these gases? What is it doing to my children when they are running in their own backyard? What are all the children at Bunker Elementary school running around being exposed to?

Response to comment 50:

Please also see the response to comments 15 and 16.

Comment 51 by Lora Gisler:

I would also like to see ONE phone number to call when there is a problem like the smell in the air, but also ONE number to call if there is an emergency, to find out what we need to do. Right now, if we smell the odor we must call the BAAQMD, the Newark Fire Department and Evergreen Oil. Most people will not

take the time to do this because it takes too much time and past experience has shown that these calls have little or no effect. One phone number, which contacts all concerned parties and records the information, to call please!

Response to comment 51:

We have discussed this with the City of the Newark Fire Department. They have recommended that the City of Newark Dispatch Center at (510) 790-7254 should be contacted for the odor problems and non-emergency situations. The dispatch center is currently instructed to dispatch a fire engine vehicle to go to the facility and investigate the odor complaints. The BAAQMD has different procedures and they need to get a number of calls before they will send an inspector to the site. Please also see the response to comment 20.

Comment 52 by Lora Gisler:

I have been to most of the meetings put on concerning Evergreen. I am concerned that there has been a large turnover of staff that is looking at the Evergreen Oil permit. I have expressed my concerns to many people, but unfortunately I do not feel the concerns are heard for very long since those people are not present now.

Response to comment 52:

DTSC, like any other organization, experiences staff turnover. However, DTSC maintains all the records in the facility file for review by the public or staff. DTSC had a court recorder present in the public hearing to record all the comments that were submitted regarding the facility. DTSC also responds to all the comments collected during the public comment period in writing.

Comment 53 by Lora Gisler:

Please disapprove any modifications, and encourage Evergreen to find greener pastures somewhere else.

Response to comment 53:

DTSC in making a permit decision has to follow the established rules and regulations. DTSC has reviewed and provided responses to all the comments received during the public comment period. While DTSC does not believe that the information provided is sufficient to deny the facility's permit modification

application, DTSC will require the facility to install additional abatement systems at the facility. See the responses to comments 15 and 16.

Comment 54 by the Cerrone Family dated November 15, 2001:

As residents of Newark, we would like to voice our objection to allowing Evergreen Oil, Inc. to add another hazardous poison (Sodium Hydroxide) to their processing procedure.

Evergreen Oil, Inc. has failed their environmental responsibilities in numerous areas just within the last year. We believe they should show responsibility in maintaining a good bill of public health concern before being allowed to add additional poisons to their processing. A company that has such potential impact on our neighbor's health safety should be in top standing before being allowed to take even more risk with our health. We believe without any doubt that Sodium Hydroxide identified as a "Severe" poison is capable of bringing health hazards to our neighborhood. Respiratory problems are one of the very potential hazards, especially since it is recommended that some of this poison be vented into our neighborhood's air to reduce employee exposure. It is very clear that anyone allowed to work with this poison should be trained, tested and proven to be qualified as responsible and law/regulation abiding. Evergreen Oil, Inc. has been tested and observed this past year and has proven to be irresponsible and unlawful in many of their procedures, they DO NOT, SHOULD NOT qualify to add ANY further poisons to their company including Sodium Hydroxide.

Response to comment 54:

Evergreen Oil has been storing sodium hydroxide on its site for the past fifteen years. Sodium hydroxide is stored in liquid form (50%) in a 5500-gallon carbon steel tank. The tank is situated on a concrete pad which is enclosed by a concrete retaining wall for spill containment.

Sodium hydroxide is a corrosive liquid. The operators have to be trained and they wear the proper personal protective equipment when they handle sodium hydroxide. Sodium hydroxide is not a volatile compound and in the ambient conditions no emissions are anticipated from the storage tank. The sodium hydroxide tank is located on the west side of the plant and is approximately 1/3 of a mile from the residential area.

The Evergreen facility uses approximately 142 gallons per day of sodium

hydroxide. The sodium hydroxide is utilized for used oil treatment, water treatment, gas scrubbing and pH adjustment.

Comment 55 by George Mognaga dated November 27, 2001:

Re: Public Comments - Evergreen Oil, Inc.- Class 3 Modification Request -
Withheld Facts

DENY THE MODIFICATION REQUEST

On two occasions during the Class 3 Modification Process discussions with the Department Of Toxic Substances Control (DTSC) and Evergreen Oil Inc. (EOI), the public was misled and deceived.

At the August 2, 2000 Public Hearing, the EOI staff provided to the public a brochure that detailed odor reporting procedures to their 24 Hour Odor Hotline in the event of an odor problem. This was done with the approval of the DTSC and indicated to the community that EOI was making a positive effort to eliminate discharged odors.

At the November 14, 2001 Community Meeting, EOI reported a dramatic reduction in the number of odor complaints to the Bay Area Air Quality Management District (BAAQMD) and the Newark Fire Department. The number of complaints to their 24 Hour Odor Hotline were omitted from the report.

At the November 15, 2001 Public Hearing there was no discussion about the number of reports to the 24 Hour Odor Hotline. The majority of the attendees at the meeting had three primary interests:

1. Can the oily odors be eliminated?
2. Do the oily odors contain toxins?
3. Are the oily odors a human health risk?

The class 3 modification process was a minor issue. It was the existing plant, and the plant's history of odor releases that have plagued the community is what they were concerned with. They were in hopes that the DTSC, the most qualified organization in this field, representing the state of California , would help them resolve the odor issue.

What this has placed on us is a 15 month period of time in a major project where important data has been withheld from the State of California and the Public.

This data should, and must be included when making a decision on the class 3 modification permit.

It is the responsibility of the DTSC to correct what has taken place. I would like to see the following:

- a) Obtain from EOI, their record of odor reports made to the 24 Hour Odor Hotline in the past 15 months. Make this information available to the public at the next scheduled meeting.
- b) Explain to the public that non-toxic odors are not the responsibility of the DTSC, but they are concerned.
- c) Contact the BAAQMD and make them part of the agenda at the next meeting. This will allow the DTSC to control the project and BAAQMD to take control of the odor issue.
- d) Schedule another public meeting to accomplish the items listed above.

Thank you for allowing me to comment on the project. I am aware of the need to have companies like Evergreen Oil and the major roll they play in the oil industry and the environment. However, we still should have all the facts whenever we make important decisions.

Response to comment 55:

a) Evergreen has provided DTSC with the list of the complaints received through the Hotline. It shows four complaints recorded in the year 2000 on the following days: 7/25/00, 9/8/00, 9/27/00, 10/2/00. There were six complaints recorded in 2001 up through November 30, 2001: 1/21/01, 3/20/01, 5/12/01, 7/25/01, 9/10/01, and 10/14/01. Evergreen has indicated that it investigated these complaints. Evergreen has indicated it will provide the Hotline data to the community in the next community meeting.

b) DTSC is concerned about air quality and air emissions coming out of the Evergreen facility. Please see responses to comments number 15 and 16.

c) BAAQMD is involved with the source test and air emissions calculations from the facility. The air emissions calculations from BAAQMD will be used in calculating the HRA and the impact to the environment and the public. AQMD will be requested to be part of the agenda and participate in the permit renewal meeting.

d) DTSC will incorporate your comments in the next public meeting discussion.

Comment 56 by George Mognaga dated November 28, 2001:

What improvements have been made to the 24 Hour Odor Hotline as promised by Evergreen Oil Inc.?

Response to comment 56:

It is DTSC's understanding that Evergreen has established a procedure to record and investigate all the calls made to their 24 hour Odor Hotline. Evergreen has also sent fliers to the community and held meetings to inform the public of the their 24 hour Odor Hotline. Evergreen has stated that it will engage the services of a public relations firm/person and plans on having quarterly community meetings, starting March 2002.

Comment 57 by George Mognaga dated November 28, 2001:

On July 25, 2001, after an odor release, it took five telephone calls to Evergreen Oil to convince them that the 24 Hour Odor Hotline was not working, or left off hook.

Response to comment 57:

Evergreen representatives have indicated that their telephone company, Pacific Bell, had disconnected the lines on that day and had forgotten to reconnect the Hotline. This was immediately corrected after this was identified.

Comment 58 by George Mognaga dated November 28, 2001:

What is the status of the automated emergency notification system?

Response to comment 58:

Evergreen has provided funds to the City for the purchase of the emergency notification system. However, DTSC understands that there has been a problem with making the automated emergency notification system operational, and the City is still working on the system.

Comment 59 by George Mognaga dated November 28, 2001:

What is the status of the vapor recovery system for the asphalt loading rack?

Response to comment 59:

As a condition of this permit modification approval, Evergreen has agreed to install a vapor recovery system for the asphalt loading rack.

Comment 60 by Evergreen dated November 30, 2001:

The following are Evergreen comments on Evergreen's Class 3 permit modification dated November 30, 2001

**FACILITY DESCRIPTION AND BACKGROUND
ODOR ISSUES:**

The Evergreen facility is located in a commercial/industrial area and is not the only source of odor in the area. There are many industrial facilities located in the vicinity of Evergreen's facility.

We have enclosed a list of the odor complaints from the BAAQMD for the years 1999, 2000 and 2001. The odor complaints were reduced 68% in the past two years.

We also have enclosed a list of the odor complaints from the Newark Fire Department (NFD). As you will note the number of the complaints also was reduced 63% in the past two years.

The difference in the number of complaints reported to the BAAQMD and NFD is because more citizens complain to the BAAQMD than the NFD.

In the past two years Evergreen did not have any major odor complaints. Most of the complaints occurred many years ago. On November 29, 1999 there was an incident at the facility, which was caused by a mechanical failure in the heater. It was not an odor episode.

Enclosed you will find a copy of a memo dated June 27, 2000 from Ms. Jackie Bretschneider to Dennis Gleeson, retired Fire Chief. Ms. Bretschneider was an employee of the Fire Department for 16 years and now works for the City of Gilroy. The memo summarizes Evergreen's effort in reducing the odors. The Newark Fire Department had conducted air sampling during strong odor events, and the laboratory analyses indicated that no harmful levels of chemicals were

found. Most of the sampling resulted in no detection for over 150 organic and sulfur compounds. Copies of the lab analyses are enclosed.

Evergreen has prepared a flier with input from NFD and the BAAQMD outlining the notification procedure for odor complaints. Evergreen has a 24-hour odor hotline, which is answered by the operator in the facility's control room. This system has been working effectively. Enclosed is a copy of this flier. When the operator receives a call on the hotline he checks the facility and calls the complainant back informing him/her about his findings. You will find enclosed a list of the complaints that were received through the hotline.

We have been working very closely with NFD and we notify them whenever we have a plant upset or maintenance problem.

IMPROVEMENTS:

In the past two years Evergreen has implemented the following programs, which have reduced the odors by an average of 66%

- 1) A quarterly fugitive emissions program conducted by an independent contractor.
- 2) Purchased a gas detection instrument to check and maintain the equipment daily.
- 3) Installed larger activated carbon units on emission sources.
- 4) Replaced the vapor recovery blower with a more efficient one.
- 5) Stopped burning halogenated material.

Evergreen will continue to cooperate with the community, local and state agencies and is proposing to install in the year 2002:

- 1) Vapor recovery equipment for the truck and railcar loading and loading operation.
- 2) Replace the existing scrubber with a more efficient one
- 3) Install additional activated carbon units on the tanks for vapor recovery as a back up for the heater.

Evergreen engineers already have started designing these systems. We will obtain the necessary permits from DTSC, BAAQMD and the City of Newark, as needed, for the new installations. Actual installation dates would depend on the

issuance of the regulatory permits.

ENFORCEMENT/SETTLEMENT:

Attached are copies of our air permit from the BAAQMD and the City of Newark Building Department. Since Tank 501 C vapor is connected to the heater, the BAAQMD required a source test for the heater. On October 11, 2001, Evergreen conducted a source test showing that 95% of the vapors are destroyed. A copy of the source test is enclosed. You will also find enclosed one set of drawings for the 1 "transfer line from V-401 to Tank 501 C.

THROUGHPUT CAPACITY:

It is impractical to measure the facility throughput in gallons per minute. We recommend measuring the facility's capacity annually based on a calendar year (Jan 1st to Dec 31st). We believe DTSC must require Evergreen to measure the throughput capacity in a similar method used by other oil recycling facilities in the State of California.

Evergreen has operated the facility safely for the past 10 years and with no significant impact on the environment. Evergreen commits to comply with the conditions of its operating permits and other applicable regulations.

We request DTSC to approve Evergreen's Class 3 Permit Modification application and authorize the facility to continue operating as specified in the Temporary Authorization. Time is of the essence and we request DTSC to exert its best effort in approving Evergreen's Class 3 Mod prior to Dec. 13, 2001.

Response to comment 60:

Comments noted. DTSC reviews all the comments received during the public comment period. After analyzing all the comments and responding to all the comments then DTSC make its decision. DTSC bases its decision , on the merits of the application and the impact on the public health and the environment.

Comment 61 from the City of Newark Fire Department dated November 30, 2001 by Mr. Miguel Trujillo, Hazardous Material Specialist

Subject Comment for proposed class 3 permit modifications.

The City of Newark Fire Department (NFD), Hazardous Materials Bureau, is providing the following comment in regard to Evergreen Oil Inc.'s (EOI) proposed class 3 permit modification. As you are aware, the Hazardous Materials Bureau is the local Certified Unified Program Agency (CUPA) responsible for conducting such inspections. The NFD has been working closely with EOI to address current and past odor issues. As a result of ongoing odor complaints, the NFD has identified actual and potential odor abatement solutions.

On October 14, 1999, the NFD issued a corrective action letter to EOI. This letter outlined the following pertinent requirements:

1. Purchase and utilize gas-sampling canisters during confirmed odor episodes.
2. Perform a third party audit on all odor abatement devices within the facility.
3. Provide copies of plant's maintenance schedule and all odor complaints that are received.
4. Hire a public relations officer to work with the community and the NFD.

All requirements were met except the action item requiring an assignment of a public relations officer or professional community liaison to work with the community and the NFD. This community liaison would be responsible for scheduling community meetings, providing analysis and interpretation of technical issues and reporting back on Evergreen's success in meeting the public's concerns. The liaison would make recommendations for improvement in communication or information provided and verifies the accuracy of statements made by Evergreen and other agencies or environmental groups.

Following the community hearing and public hearing conducted during November 14 and 15th 2001 several ongoing issues were identified. These issues focus on the odor problems, which can be detected at very low levels. Additional issues include dioxin emissions from current operations. The NFD has conducted several odor investigations and feel that odorous compounds may be the responsible, but no detectable concentrations were confirmed. The Bay Area Air Quality Management District (BAAQMD) has approached this situation as a nuisance only situation based on the nature of the complaints and the previously completed Health Risk Assessment.

Based on the limited air monitoring data collected by the NFD and questionable source test data from the initial Health Risk Assessment (March 4, 1997),

collection of current source test data is warranted for completion of the final Health Risk Assessment. In order to address these various issues, all the interested agencies (DTSC, BAAQMD and NFD) should meet to discuss source testing that reflects current operations, equipment and ultimately completion of the pending Health Risk Assessment.

Response to comment 61:

DTSC agrees that all the interested agencies should meet and coordinate the activities related to Evergreen Oil, Inc.

Comment 62 from the City of Newark Fire Department dated November 30, 2001 by Mr. Miguel Trujillo, Hazardous Material Specialist

Based on previous inspections conducted by the NFD and DTSC, short term and long term improvements have been identified and should be completed by EOI and included as conditions in the pending Class 3 Permit Modifications. This includes a more thorough assessment of all odor source such as tanks, piping networks, railcars, asphalt loading and unloading, fugitive emissions and other operations not currently connected to the existing activated carbon abatement equipment. The existing odor abatement equipment is not adequate for current operations and requires the addition of more efficient abatement equipment such as biofilters and thermal oxidizers designed for specific operations which also meet the BAAQMD best available control technologies.

Response to comment 62:

See also response to comment 15. As a condition to approval of this class 3 permit modification, DTSC is requiring that Evergreen install the following systems:

- a) No later than June 30, 2002, replace the existing scrubber with a new and more efficient scrubber on the hot oil heater with a design capacity for the gas flowrate of 11500 acfm as specified in the Authority to Construct permit issued to Evergreen Oil, Inc. by the Bay Area Air Quality Management District (BAAQMD) on February 14, 2002.
- b) No later than June 30, 2002, connect the vapor recovery system to tanks T503A, T503B and T505, to reduce emissions when tanks are being filled.

c) Within 120 days after approval from all agencies, install a thermal oxidizer to abate the odors that are generated from the existing asphalt loading rack. The new system will include the installation of approximately 650 feet of 6-inch diameter ducts, blower, scrubber and a thermal oxidizer. The thermal oxidizer shall also be used to abate the vapors from the vapor recovery system when the heater is down. The vapor recovery system includes the following storage tanks sources: Tanks T502, T503A, T503B, T505, T507, T509, T510, T511A, T511B, T512A, T512B, T651A, T651B and T652. The activated carbon shall be used as a standby to reduce emissions from the above sources when both the heater and thermal oxidizer are out of service.

The Permittee shall submit permit applications for the thermal oxidizer to all appropriate agencies within 30 days from the effective date of this permit renewal.

d) No later than June 30, 2002, install interface level transmitter in Vessel 701, which handles overhead condensate containing halogens and mercaptans, to eliminate manual interface detection. The level transmitter will be installed in an existing vessel connection where the interface is detected by manually opening a valve.

e) Within 30 days from the effective date of this permit modification, trucks (except asphalt trucks) shall be loaded from the bottom to minimize odors from the trucks.

Evergreen will obtain the necessary permits from DTSC, BAAQMD and the City of Newark, as needed, for the new installations. Evergreen must send a notification to DTSC certifying that the work has been completed.

Comment 63 from the City of Newark Fire Department dated November 30, 2001 by Mr. Miguel Trujillo, Hazardous Material Specialist

The 1997 Amendment to EOI's Conditional Use Permit was granted by the City of Newark subject to several conditions aimed at mitigating hazardous materials and odor problems. For reasons unrelated to the City of Newark, EOI has not implemented this amended use permit. As a result, this use permit amendment may have expired for failure to obtain building permits within one year. Therefore, EOI would have to reapply for an amendment to the 1983 Conditional Use Permit (CUP) to expand and upgrade the facility. Once the City confirms that 1997 amendments have expired, any expansions or upgrades will have to

approved by the City Council. Based on current operations, the City of Newark will place new conditions on any use permit modifications.

After conducting a brief review on current use permit requirements, the City of Newark has determined that EOI has violated conditions set forth in the use permit. By virtue of the 1983 CUP, EOI is permitted to store only lube oil classified products. The Use Permit will terminate and have no force and effect when the processing or storage of any other materials or products is introduced in the operation. EOI did store antifreeze beginning on August 24, 1988 up to October 1, 1990. Storage of antifreeze will require a Use Permit modification.

As a result of the ongoing odor issues, EOI has also violated local municipal code requirements (NMC section 8.24.020 P and U). EOI has been operating and maintaining the facility in a way that has resulted in numerous odor complaints. Such odors have rendered several occupancies and properties uncomfortable to numerous persons.

The City of Newark has reviewed the pending proposed class 3 permit modifications for EOI. EOI should implement odor abatement strategies prior to conducting any operations listed on the class 3 permit modifications. To date, EOI has not made significant improvements to reduce releases of odorous compounds.

If approved, the Class 3 Permit Modifications should set forth conditions requiring EOI to meet all odor abatement conditions identified in the their Use Permit. The City of Newark has not yet completed a thorough review of existing use permit requirements but the City is requesting that the proposed Class 3 permit modifications not be approved at this time.

Response to comment 63:

See responses to comments 15 and 62. DTSC has set forth conditions requiring Evergreen to make the following modifications in response to the public and the City of Newark Fire Department:

- a) No later than June 30, 2002, replace the existing scrubber with a new and more efficient scrubber on the hot oil heater with a design capacity for the gas flowrate of 11500 acfm as specified in the Authority to Construct permit issued to Evergreen Oil, Inc. by the Bay Area Air Quality Management District (BAAQMD) on February 14, 2002.

- b) No later than June 30, 2002, connect the vapor recovery system to tanks T503A, T503B and T505, to reduce emissions when tanks are being filled.
- c) Within 120 days after approval from all agencies, install a thermal oxidizer to abate the odors that are generated from the existing asphalt loading rack. The new system will include the installation of approximately 650 feet of 6-inch diameter ducts, blower, scrubber and a thermal oxidizer. The thermal oxidizer shall also be used to abate the vapors from the vapor recovery system when the heater is down. The vapor recovery system includes the following storage tanks sources: Tanks T502, T503A, T503B, T505, T507, T509, T510, T511A, T511B, T512A, T512B, T651A, T651B and T652. The activated carbon shall be used as a standby to reduce emissions from the above sources when both the heater and thermal oxidizer are out of service.

The Permittee shall submit permit applications for the thermal oxidizer to all appropriate agencies within 30 days from the effective date of this permit renewal.

- d) No later than June 30, 2002, install interface level transmitter in Vessel 701, which handles overhead condensate containing halogens and mercaptans, to eliminate manual interface detection. The level transmitter will be installed in an existing vessel connection where the interface is detected by manually opening a valve.
- e) Within 30 days from the effective date of this permit modification, trucks (except asphalt trucks) shall be loaded from the bottom to minimize odors from the trucks.

Evergreen will obtain the necessary permits from DTSC, BAAQMD and the City of Newark, as needed, for the new installations. Evergreen must send a notification to DTSC certifying that the work has been completed. The issuance of this Class 3 Permit Modification by DTSC does not relieve Evergreen Oil, Inc. from complying with the City's land use ordinances and use permit requirements.

Comment 64 from Trubie Bailey dated November 9, 2001

I just read the Fact Sheet dated November 2001 about Evergreen Oil, Inc. and their bid to get permission to expand their capacity AND add ANOTHER hazardous poison (sodium hydroxide) to the processing procedure.

I am very confused about WHY that would even be considered at this point, when less than a year ago (12/2000), Evergreen was found to have illegally burned hazardous waste at its Newark facility. It has unlawfully stored, treated, and disposed of hazardous waste. It has failed to test its recycled oil. It has failed to certify its shipments, and it has failed to follow the Waste Analysis Plan.

Call me crazy, but it just seems totally absurd to reward bad behavior with the means to do even more, if not worse risking of public health.

Response to comment 64 from Trubie Bailey

Enforcement actions by DTSC against Evergreen for the various violations resulted in a court approved Stipulation for Settlement and Entry of Judgement dated November 9, 2000. The penalties imposed is a deterrent for any violations. As part of the Stipulation, Evergreen has agreed to rectify those violations and operate the facility in compliance with the applicable statutes and regulations. See also responses to comments 15 and 62 and 63.

Comment 65 from Trubie Bailey dated November 9, 2001

The research I conducted on Sodium Hydroxide identified it as having a health rating of 3 — Severe (Poison). It is harmful if inhaled and it reacts with water, acids and other materials. My son and I already have respiratory problems. The morning air in our neighborhood is already acid on many days. I absolutely do not want to add to that problem. Newark is pretty much at sea level. It is easy to imagine that Evergreen's sodium hydroxide might just react to that ground water and cause problems. My last concern about this poison is that it is recommended for companies to employ a "system of local and/or general exhaust" to avoid employee exposures. So, Evergreen will need to "vent" some of this stuff... into our neighborhood.

Getting back to my main point. Shouldn't we wait five or ten years to see if Evergreen can maintain a good bill of public health concern before adding this poison and greater production to a company that has proven itself to be irresponsible to that concern?

Response to comment 65 from Trubie Bailey

See responses to comments 47 and 54.